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A PRACTICAL VIEW OF THE WTO DISPUTE SETTLEMENT MECHANISM THROUGH VARIOUS CASES

Session 4 – Case Study: DS217-234

US – Byrd Amendment

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BACKGROUND

- Originally authored by Sen. DeWine, the CDSOA was passed in 2000 by the 106th Congress into public law 106-387 as an amendment title X of the Agricultural Spending Bill
- Sen. Byrd rallied support to see through this Bill, hence the name “The Byrd Amendment”
- Signed by President Clinton on the 28th of October 2000, the CDSOA modifies the Tariff Act of 1930
- The CDSOA provides that the United States Commissioner of Customs ("Customs") shall **distribute, on an annual basis**, duties assessed pursuant to a countervailing duty order, an antidumping order, or a finding under the US Antidumping Act of 1921, to **“affected domestic producers” i.e. petitioners for “qualifying expenditures”**



BACKGROUND

- The ITC is empowered by this Act to determine which companies supported the purpose(s) of the Byrd Amendment
- Funds generated by Customs are kept in a special account and later disbursed after the AD/countervailing duties have been levied against the importer and succinct determination has been made per the local firms eligibility
- According to U.S. Customs, total Byrd disbursements to U.S. producers amounted to US\$ 231 million in 2001, US\$ 330 million in 2002, US\$ 240 million in 2003, US\$ 284 million in 2004 and US\$ 226 million in 2005



BACKGROUND

- Seven major industries received CDSOA payments—bearings, steel, candles, pasta, dynamic random access memory (DRAMs) semiconductors, crawfish, and softwood lumber

Company	Amount paid	Amount claimed	Industry
• The Timken Company	\$205,328,783	\$59,990,348,732	Bearings
• The Torrington Company	135,349,304	22,175,725,680	Bearings
• Candle-lite	56,759,989	1,285,509,591	Candles
• MPB Corporation	55,131,485	9,158,867,720	Bearings
• Zenith Electronics Co.	33,412,990	23,270,258,343	TVs
• Micron Technology	33,389,988	9,093,423,782	DRAMs
• Lancaster Colony Co.	26,225,555	1,382,869,375	Candles
• U. S. Steel Corp.	22,925,628	590,935,208,013	Steel
• Home Fragrance Holdings	20,394,804	444,243,884	Candles
• Wellman	15,681,319	1,291,294,651	Polyester fiber



WTO PROCEEDINGS

- 21 Dec. 2000: A few weeks after enactment, the EU and eight other countries requested consultation with the US; Mexico and Canada joined later
- 13/21 Jul. 2001: Requests for establishment filed
- 5 Nov. 2001: Panel composed
- Main claims:
 - Is a "specific action against dumping and subsidization" that is not in accordance with the Anti-Dumping Agreement or the SCM Agreement, and as such is WTO-inconsistent
 - Undermines the value of, and thus violates, the requirements in the AD and SCM Agreements that AD and countervailing duty investigations **not** proceed unless they are supported by a specified percentage of the domestic industry



WTO PROCEEDINGS

- 16 Sept. 2002: Panel report circulated
- 16 Jan. 2003: Appellate Body report circulated
- Findings:
 - **Non-permissible specific action** against dumping or a subsidy, contrary to Articles VI:2 and VI:3 of the GATT 1994, Article 18.1 of the AD Agreement and Article 32.1 of the ASCM
 - Inconsistent with certain provisions of the AD Agreement and SCM Agreement, so that the US has failed to comply with Article 18.4 of the AD Agreement, Article 32.5 of the ASCM and Article XVI:4 of the WTO Agreement
 - Has **nullified or impaired** benefits accruing to the complaining parties under those Agreements



ARBITRATION 21.3

- 27 Jan. 2003: Adoption of the reports by the DSB
- Principle: **prompt compliance** with recommendations or rulings of the DSB is **essential**
- Within **30 days** from the adoption of the report(s), the Member must inform of its intentions
- If immediate compliance is **impracticable**: DSB, mutual agreement or arbitration (guidance: not more than 15 months)



ARBITRATION 21.3

Some statistics

Average Time Period (in months) for
Reasonable Period of Time Pursuant
To DSU Article 21.3(c) Arbitrations
11.54

Average Time Period (in months) for
Reasonable Period of Time Pursuant
To DSU Article 21.3(b) Agreements
9.38

Average Time Period (in months) for
SCM Agreement
4.7 Recommendations
3.46

Implementation provision	# of times used
DSU 21.3b (agreement)	66
DSU 21.3c (arbitration)	23
Withdrawn before adoption	7



ARBITRATION 21.3

- *US – Offset Act (DS217/234, 21.3):*
 - Complainants requested **6 months** (p 27)
 - Defendant requested **15 months** (p 6)
 - The Arbitrator ruled **11 Months** (p 83)
- *US – Offset Act (DS217/234, Panel p 8.6)* “... [based on Art 19.1 DSU] ...we suggest that the United States bring the CDSOA into conformity by repealing the CDSOA...”
- *US – Offset Act (DS217/234, 21.3 Arb. p. 52)* “... I do not believe that the existing of such a suggestion [by the Panel to repeal the measure] ultimately affects the well-established principle that ‘choosing the means of implementation is, and should be, the **prerogative of the implementing Member.**’”



ARBITRATION 22.6

- **Complainants:**

the level of suspension of concessions or other obligations should be equivalent to the disbursements made by the United States under the measure at issue

- **Arbitrator: economic effect of the measure**

Developed an **economic model** aimed at assessing the effect of disbursements under the CDSOA on exports of the above-mentioned Members to the United States, and thus came up with a **coefficient** which, multiplied by the amounts disbursed by the United States under the CDSOA in relation to anti-dumping or countervailing duties collected on imports from each of the those Members, gives an assessment of the **economic effect** of the CDSOA on exports from each of those Members for a given period



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ARBITRATION 22.6

- Amount must be updated regularly
- The award allow those Members to suspend concessions or other obligations up to a **maximum value of trade** to be calculated by multiplying the published **amount of disbursements** under the CDSOA for a given year by the **coefficient** calculated by the Arbitrator



CURRENT SITUATION

- Customs publishes the amounts collected and distributed every year

FY 2014 CDSOA ANNUAL DISBURSEMENT REPORT

Commerce Case Number	Case Name	Certification #	Claimant Name	\$ Certification Filed FY2014	Allocation %	\$ Paid FY2014	\$ Held FY2014*
C-580-842	Structural Steel Beams/Korea	E1401703	NUCOR CORPORATION	\$5,712,515,306.38	0.0000000000	\$0.00	\$0.00
Total for: C-580-842				\$5,712,515,306.38		\$0.00	\$0.00
C-580-851	DRAMs and DRAM Modules/Korea	11400535	MICRON TECHNOLOGY INC	\$8,791,652,451.00	100.0000000000	\$19,897.79	\$0.00
Total for: C-580-851				\$8,791,652,451.00		\$19,897.79	\$0.00
C-583-604	Top-of-the-Stove Stainless Steel Cooking Ware/Taiwan	11401403	REGAL WARE INC	\$365,604,296.00	0.0000000000	\$0.00	\$0.00
Total for: C-583-604				\$365,604,296.00		\$0.00	\$0.00
C-791-806	Stainless Steel Plate in Coils/South Africa	11400745.5	ALLEGHENY LUDLUM LLC	\$428,223,209.83	0.0000000000	\$0.00	\$0.00
C-791-806	Stainless Steel Plate in Coils/South Africa	11400721.6	NORTH AMERICAN STAINLESS	\$1,448,317,178.36	0.0000000000	\$0.00	\$0.00
Total for: C-791-806				\$1,876,540,388.19		\$0.00	\$0.00
C-791-810	Hot-Rolled Steel Products/South Africa	E1401581	GALLATIN STEEL COMPANY	\$2,503,651,685.86	0.0000000000	\$0.00	\$0.00
C-791-810	Hot-Rolled Steel Products/South Africa	E1401708	NUCOR CORPORATION	\$14,181,184,041.54	0.0000000000	\$0.00	\$0.00
C-791-810	Hot-Rolled Steel Products/South Africa	E1401509	SEVERSTAL DEARBORN LLC	\$3,100,528,138.86	0.0000000000	\$0.00	\$0.00
C-791-810	Hot-Rolled Steel Products/South Africa	11401245	UNITED STATES STEEL CORPORATION	\$13,010,540,935.86	0.0000000000	\$0.00	\$0.00
Total for: C-791-810				\$32,795,904,802.12		\$0.00	\$0.00
GRAND TOTAL:				\$2,965,679,026,116.74		\$79,111,832.35	\$60,997.10
LESS OFFSETS**:						\$0.00	\$0.00
ADJUSTMENTS***:						\$2,606,732.89	\$24.49
TOTAL DISBURSED****:						\$81,718,565.24	\$61,021.59

*Held amounts may include administrative actions or amounts held pending litigation

**Includes prior year debt and demands

***Includes reliquidations resulting in demand

**** Total amount disbursed for 2014



CURRENT SITUATION

EU's suspension of concessions – Yearly notification (last from 13 May 2015)

The updated list is attached. The suspension, which applies as from 1 May 2015, covers, over one year, a total value of trade that does not exceed USD 3 295 333.

The amount of USD 3 295 333 is the European Union's current level of authorization established through arbitration under Article 22.6 of the DSU. It represents 72 *percent* of USD 4 576 852 collected from the European Union' exports and disbursed to U.S. companies in the distribution under the *Continued Dumping and Subsidy Offset Act of 2000* for the most recent year for which data are available. The amount of relevant disbursements was identified using the CDSOA Annual Report for Fiscal Year 2014, published by US Customs and Border Protection¹ on 5 December 2014.

Subject to the 1,5% additional import duty as from 1 May 2015	CN codes	Description of products
	0710 40 00	Sweet corn, uncooked or cooked by steaming or by boiling in water, frozen
	9003 19 30	Frames and mountings for spectacles, goggles or the like, of base metal
	8705 10 00	Crane lorries (excl. breakdown lorries)
	6204 62 31	Women or girls' cotton denim trousers and breeches



CURRENT SITUATION

- Item featuring regularly in the agenda of the DSB
- April 2015:
 - ✓ EU and other Members asked the US to stop transferring AD/CVDs collected and to comply with its obligations
 - ✓ US: “...the Deficit Reduction Act, which included a provision repealing the Continued Dumping and Subsidy Offset Act of 2000, was enacted into law in **February 2006**. Accordingly, the United States had taken all actions necessary to implement the DSB's recommendations and rulings in these disputes”